



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/639,076	08/11/2003	Mark S. Dennis	P1639R1C1	6938

23552 7590 01/13/2005

MERCHANT & GOULD PC  
P.O. BOX 2903  
MINNEAPOLIS, MN 55402-0903

EXAMINER

SNEDDEN, SHERIDAN

ART UNIT	PAPER NUMBER
----------	--------------

1653

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/639,076

**Applicant(s)**

DENNIS, MARK S.

**Examiner**

Sheridan K Snedden

**Art Unit**

1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 11 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 19-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 27-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/11/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Applicant's response filed 11/11/2004 is acknowledged. The addition of new claims 32-34 and amendment of claims 1, 2, 12, 15, 16-18 and 30-31 is acknowledged. Claims 1-34 are pending.

2. Applicant's election of invention Group I, claims 1-18 and 27-31 is acknowledged. Applicant's election of SEQ ID NO: 4 is also acknowledged. Claims 19-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim.

Election was made **with** traverse. Applicant argues that SEQ ID NO: 4 is a member of a genus related in chemical structure and function, and thus not patentably distinct. As such, the election of SEQ ID NO: 4 will be treated as a species election such that SEQ ID NO: 4 is a member of a genus comprising obvious variants of the formula defined by claim 1.

### ***Double Patenting***

Claims 1-18 and 27-34 of this application conflict with claims 2 and 4 of Application No. 10/356,257. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Slabas *et al.* (US 5,843,739). A search of the prior art produced 1,761,053 molecules encompassing the generic formula or claim 1, 251,389 molecules encompassing the generic formula or claim 15, 134,568 molecules encompassing the generic formula or claim 16 and 2424 molecules encompassing the generic formula or claim 17. Slabas *et al.* teach one such molecule that comprises the generic sequence defined in claims 1, 2, 15-17. SEQ ID NO: 7 of Slabas *et al.* comprises the sequence Leu-Ala-Val-Val-Leu-Ser-Trp-Ala-Cys-Leu-Leu which fits the generic formula of the claims 1, 2, 15-17. This sequence would inherently possess the ability to bind FVII as taught by the present claims. Thus, the reference clearly anticipates the invention as recited in the claims.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-18 and 27-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slabas *et al.* (US 5,843,739). A search of the prior art produced 1,761,053 molecules

Art Unit: 1653

encompassing the generic formula or claim 1, 251,389 molecules encompassing the generic formula or claim 15, 134,568 molecules encompassing the generic formula or claim 16 and 2424 molecules encompassing the generic formula or claim 17. Slabas *et al.* teach one such molecule that comprises the generic sequence defined in claims 1, 2, 15-17. SEQ ID NO: 7 of Slabas *et al.* comprises the sequence Leu-Ala-Val-Val-Leu-Ser-Trp-Ala-Cys-Leu-Leu which fits the generic formula of the claims 1, 2, 15-17. The remainder of the claims are directed to obvious variants of SEQ ID NO: 7 taught by Slabas *et al.* Thus, the claimed invention was within the ordinary skill in the art to make and use at the time it was made and was as a whole, *prima facie* obvious.

### ***Conclusion***

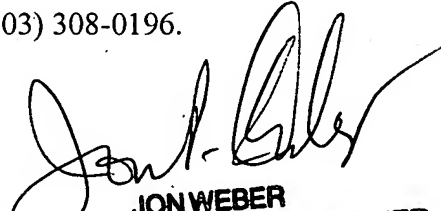
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sheridan K Snedden whose telephone number is (571) 272-0959. The examiner can normally be reached on Monday - Friday, 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jon Weber can be reached on (571) 272-0925. The fax phone number for regular communications to the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

SKS  
January 5, 2005

SKS

  
JON WEBER  
SUPERVISORY PATENT EXAMINER